IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 19775 of 2003(D)

PETITIONER:

K.SUKUMARAN, MANAGER, N.S.V.HIGH SCHOOL, VALACODE P.O., PUNALUR, KOLLAM.

BY ADV. SRI.P.SANJAY
SMT.A.PARVATHI MENON

RESPONDENTS:

----

1. **STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

3. **THE DISTRICT EDUCATIONAL OFFICER, PUNALUR.**

4. **THE SECRETARY, SREE NARAYANA TRUST, KOLLAM DISTRICT.**

BY SRI.V.K.BEERAN, ADDL.ADVOCATE GENERAL
SRI.A.N.RAJAN BABU
BY SR.GOVERNMENT PLEADER SRI.T.T. MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER IN I.A.NO.6275/2003 IN WP(C) NO.19775/2003 D

CLOSED

4/09/2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF SKETCH.**

EXT.P2: **COPY OF OBJECTION FILED BY THE PETITONER BEFORE THE 3RD RESPONDENT DTD. 18/07/00.**

EXT.P3: **COPY OF PETITION FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DTD. 29/10/01.**

EXT.P4: **COPY OF JUDGMENT IN O.P.NO.36902/01 DTD. 03/04/02.**

EXT.P5: **COPY OF ORDER NO.G.O.(RT) NO.3126/02/G.EDN. DTD. 13/09/02 OF THE 1ST RESPONDENT.**

EXT.P6: **COPY OF CERTIFICATE ISSUED BY THE SUB-TREASURY OFFICER, PUNALOOR DTD. 19/06/03.**

EXT.P7: **COPY OF PAPER REPORT DTD. 29/05/03 AND 11/06/03.**

4TH RESPONDENT'S EXHIBITS:

EXT.R4(A): **COPY OF NOTIFICATION DTD. 2/04/1997 ISSUED BY GOVERNMENT.**

EXT.R4(B): **COPY OF LETTER DTD. 26/04/1997 FORWARDING APPLICATIONS TO THE DIRECTOR, HIGHER SECONDARY EDUCATION BY THE S.N.TRUSTS.**

EXT.R4(C): **COPY OF THE NOTIFICATION DTD. 25/06/1998 ISSUED BY THE DIRECTOR OF PUBLIC INSTRUCTION.**

EXT.R4(D): **COPY OF NOTIFICATION DTD. 18/10/1999 ISSUED BY GOVERNMENT.**

EXT.R4(E): **COPY OF NOTIFICATION DTD. 10/11/1999 ISSUED BY GOVERNMENT.**

WPC.NO.19775/2003 D

EXT.R4(F): COPY OF ORDER DTD. 6/09/2000 IN O.P.NO.22303 OF 2000, 23677 OF 2000 AND CONNECTED CASES OF THIS HON'BLE COURT.

EXT.R4(G): COPY OF JUDGMENT DTD. 29TH AUGUST 2002 IN W.A.NO.2716 OF 2000.

EXT.R4(H); COPY OF NOTIFICATION NO.NS(3)/43529/98 DTD. 1/07/2000 ISSUED BY DIRECTOR OF PUBLIC INSTRUCTIONS.

EXT.R4(I): COPY OF GOVT.ORDER G.O.(P) NO.147/03/G.EDN. DTD. 5/06/2003.

EXT.R4(J): COPY OF STATEMENT FILED BY GOVERNMENT IN O.P.NO.26673 OF 2000 DTD. 17/02/2001.

/TRUE COPY/

P.A. TO JUDGE

KSS

S. SIRI JAGAN, J.

WP(C) NO. 19775 OF 2003 - D

Dated this the 4th day of September, 2007

J U D G M E N T

The petitioner is the Manager of an aided High School in Valacode, Punalur. In this writ petition, he is aggrieved by the order of the Government permitting the fourth respondent to open a new High School with higher secondary classes, in the locality where the petitioner's school is situate. The contention of the petitioner is that there is no educational need for starting a new school in the locality and further on account of starting the new school, the petitioner's school would be adversely affected. He would further contend that the petitioner had objected to the inclusion of the fourth respondent's school in the preliminary list of new schools to be sanctioned, and this Court in Ext.P4 judgment, directed the Government to consider the objections of the petitioner and to pass orders thereon. Although the Government had passed Ext.P5

order directing the Director of Public Instructions to consider the objections of the petitioner and to pass orders thereon, no orders have so far been passed. Instead the fourth respondent was sanctioned a school, news about which was known to the petitioner from Ext.P7 press report. The petitioner raises a contention that in view of Ext.P4 judgment, without passing orders pursuant to Ext.P5, sanctioning of the new school is patently unsustainable.

2. The first respondent has filed a counter affidavit justifying the sanctioning of the new school to the fourth respondent. The relevant portion of the same is contained in paragraphs 5 to 7 which read thus:-

> "5. It is submitted that the Government as part of the national educational policy bifurcated the Pre-Degree courses from the college and introduced Plus two system. Pre-Degree courses were taken away from several corporate managements and at that time there was an understanding between the Government and the corporate management to the effect that Government would sanction Plus two courses to those corporate managements from whom the Pre-Degree courses were

taken away. Several corporate management like NSS, SNDP, MES etc. thus lost Pre-Degree batches and the Government as per the said understanding has stated the desire to grant Plus two courses to these corporate managements. Since some of these corporate managements do not have High Schools for starting Plus Two courses,the Government towards the implementation of the said understanding sanctioned High Schools enabling them to start Plus Two courses. Accordingly the Government sanctioned a new high School to the 4th respondent in Ward No.20 of Punalur Municipality.

6. It is submitted that the petitioner's school is situated in ward No.25 and he has not submitted any objection within 30 days of the publication of the preliminary list and the list was finalised. The final list of the area where new High School are to be opened was published by the 2nd respondent on 19.3.2001. There was also no objection against the said notification within the time prescribed.

7. It is submitted that as stated above, towards the implementation of the understanding to sanction High School to the corporative management who loss Pre-Degree course, the Council of Ministers taken a decision on 8.3.2001 allowing the 4th respondent to start High School in ward No.20 of Punalur Municipality. It was sanctioned after evaluating and satisfying the educational need of the locality."

These contentions are supported by the fourth respondent in his counter affidavit, wherein the fourth respondent relies on Ext.R4(g) judgment of a Division Bench of this Court rendered in somewhat similar circumstances upholding such sanctioning of schools.

3. Before considering the rival contentions, I must note that this Court had not granted any interim order, but only made the sanctioning of the school subject to the result of the writ petition. The fourth respondent in his counter affidavit has categorically stated that pursuant to the orders sanctioning the school, the new school has been started which has been in existence for the last four years.

4. I have to deal with two contentions of the petitioners. First is as to whether in view of the non-compliance with the directions in Ext.P4 judgment of this court, the sanctioning of the new school is valid or not. The second is on merit itself as to whether on account of the lack of educational needs, if any, sanctioning of the new school is bad.

5. Regarding the first question, I must state that notwithstanding the failure on the part of the Director of Public Instructions to pass orders pursuant to Ext.P5, if the sanctioning of the new school is upheld on merits, there is no point in directing a post decisional hearing and orders on the subject at this point of time, especially since the new school has already started and has been functioning for the last four years. Therefore, I am inclined to consider the contentions of the petitioner on merits so that there can be a quietus to the issue. The contention of the petitioner in this regard is two fold. Firstly, the contention is that there are several schools nearby to the new school and therefore, there is no educational need for starting the new school. The second is that on account of the sanctioning of the new school, the petitioner's school will be adversely affected in so far as there would be division fall in the petitioner's school, on account of diminution in student strength. Regarding the first point, I am of opinion that the petitioner has not provided enough materials to

show that there is no educational need for sanctioning of the new school. Except from stating that there are other schools within a specified distance from this school, there is no other material to show that there is no educational need. Educational need depends on various factors and having considered this question after taking into account all the factors by the Government, this Court cannot sit in appeal over that decision in the absence of sufficient materials on record to show that there is no such educational need. I am of opinion that the petitioner has not made any serious attempt to prove lack of educational need and therefore, I am not convinced about the contention of the petitioner that there is no educational need since the competent body, namely ,the Government has held that there is educational need.

6. Further, the granting of the new school itself was based on a policy decision of the Government, for granting new schools with higher secondary courses as well to managements from whose colleges the Pre-

degree courses have been delinked. The validity of such sanctioning of schools had been upheld by a Division Bench of this Court in Ext.R4(g) judgment in somewhat identical circumstances. Therefore, following the said decision, I repel the contention of the petitioner in this regard also.

In view of the above findings, I do not find any merit in the writ petition. Accordingly, the writ petition is dismissed.

sd/-
S. SIRI JAGAN,
Judge

Mbs/

-true copy-

P.A.to Judge.

S.SIRI JAGAN, J

W.P.(C) NO.19775 OF 2003

J U D G M E N T

DATED: 04-09-2007